

(q) *Specifications* means the particulars of the structural, operational and performance characteristics or capabilities of a scientific instrument.

(r) *Guaranteed* specifications are those specifications which are an explicit part of the contractual agreement between the buyer and the seller (or which would become part of the agreement if the buyer accepted the seller's offer), and refer only to the minimum and routinely achievable performance levels of the instrument under specified conditions. If a capability is listed or quoted as a range (e.g., "5 to 10 angstroms") or as a minimum that may be exceeded (e.g., "5 angstroms or better"), only the inferior capability may be considered the guaranteed specification. Evidence that specifications are "guaranteed" will normally consist of their being printed in a brochure or other descriptive literature of the manufacturer; being listed in a purchase agreement upon which the purchase is conditioned; or appearing in a manufacturer's formal response to a request for quote. If, however, no opportunity to submit a bid was afforded the domestic manufacturer or if, for any other reason, comparable guaranteed specifications of the foreign and domestic instruments do not appear on the record, other evidence relating to a manufacturer's ability to provide an instrument with comparable specifications may, at the discretion of the Director, be considered in the comparison of the foreign and domestic instruments' capabilities.

(s) *Pertinent* specifications are those specifications necessary for the accomplishment of the specific scientific research and/or science-related educational purposes described by the applicant. Specifications of features (even if guaranteed) which afford greater convenience, satisfy personal preferences, accommodate institutional commitments or limitations, or assure lower costs of acquisition, installation, operation, servicing or maintenance are not pertinent. For example, a design feature, such as a small number of knobs or controls on an instrument primarily designed for research purposes, would be a convenience. The ability to fit an instrument

into a small room, when the required operations could be performed in a larger room, would be either a cost consideration or a matter of convenience and not a pertinent specification. In addition, mere difference in design (which would, for example, broaden the educational experience of students but not provide superior scientific capability) would not be pertinent. Also, unless the applicant demonstrates it is necessary for the accomplishment of its specific scientific purposes, the terms does not extend to such characteristics as size, weight, appearance, durability, reliability, complexity or (simplicity), ease of operation, ease of maintenance, productivity, versatility, "state of the art" design, specific design, or other such characteristics.

[47 FR 32517, July 28, 1982; 47 FR 34368, Aug. 9, 1982]

§ 301.3 Application for duty-free entry of scientific instruments.

(a) *Who may apply.* An applicant for duty-free entry of an instrument under tariff item 851.60 must be a public or private nonprofit institution which is established for educational or scientific purposes and which has placed a bona fide order or has a firm intention to place a bona fide order for a foreign instrument within 60 days following a favorable decision on the institution's application.

(b) *Application forms.* Applications must be made on form ITA-338P which may be obtained from the Statutory Import Programs Staff, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, or from the various District Offices of the U.S. Department of Commerce. (Approved by the Office of Management and Budget under control number 0625-0037.)

(c) *Where to apply.* Applications must be filed with the U.S. Customs Service, Department of the Treasury, at the address specified on page 1 of the form.

(d) Five copies of the form, including relevant supporting documents, must be submitted. One copy of the form shall be signed in the original by the person in the applicant institution under whose direction and control the foreign instrument will be used and who is familiar with the intended uses

of the instrument. The remaining four copies of the form may be copies of the original. Attachments should be fully identified and referenced to the question(s) on the form to which they relate.

(e) A single application (in the requisite number of copies) may be submitted for any quantity of the same type or model of foreign instrument provided that the entire quantity is intended to be used for the same purposes and provided that all units are included on a single purchase order. A separate application shall be submitted for each different type or model or variation in the type or model of instrument for which duty-free entry is sought even if covered by a single purchase order. Orders calling for multiple deliveries of the same type or model of instrument over a substantial period of time may, at the discretion of the Director, require multiple applications.

(f) Failure to answer completely all questions on the form in accordance with the instructions on the form or to supply the requisite number of copies of the form and supporting documents may result in delays in processing of the application while the deficiencies are remedied, return of the application without processing, or denial of the application without prejudice to resubmission. Any questions on these regulations or the application form should be addressed to the Director.

[47 FR 32517, July 28, 1982, as amended at 50 FR 11501, Mar. 22, 1985]

§ 301.4 Processing of applications by the Department of the Treasury (U.S. Customs Service).

(a) *Review and determination.* The Commissioner shall date each application when received by Customs. If the application appears to be complete, the Commissioner shall determine:

(1) Whether the institution is a nonprofit private or public institution established for research and educational purposes and therefore authorized to import instruments into the U.S. under tariff item 851.60. In making this determination the Commissioner will generally review the application to determine if the applicant has attached a copy of the letter from the Internal Revenue Service (IRS) granting the in-

stitution nonprofit status (exemption from Federal income tax) under section 501(c)(3) of the IRS Code or will determine if the institution is listed in a current edition of "Cumulative List of Exempt Organizations";

(2) Whether the instrument falls within the classes of instruments eligible for duty-free entry consideration under tariff item 851.60 (For eligible classes see Headnote 6(a), part 4, Schedule 8, TSUS); and

(3) Whether the instrument which is the subject of the application is intended for the exclusive use of the applicant institution and is not intended to be used for commercial purposes. For the purposes of this section, commercial uses would include, but not necessarily be limited to: Distribution or sale of the instrument by the applicant institution; any use by, or for the primary benefit of, a commercial entity; or use of the instrument for demonstration purposes in return for a fee or other valuable consideration. In making the above determination, the Commissioner may consider, among other things, whether the results of any research to be performed with the instrument will be fully and timely made available to the public. For the purposes of this section, use of an instrument for the treatment of patients is considered noncommercial.

If any of the Commissioner's determinations is in the negative, the application shall be found to be outside the scope of the Act and shall be returned to the applicant with a statement of the reason(s) for such findings.

(b) *Forwarding of applications to the Department of Commerce.* If the Commissioner finds the application to be within the scope of the Act and these regulations, the Commissioner shall (1) assign a number to the application and (2) forward one copy to the Secretary of the Department of Health and Human Services (HHS), and two copies, including the one that has been signed in the original, to the Director. The Commissioner shall retain one copy and return the remaining copy to the applicant stamped "Accepted for Transmittal to the Department of Commerce." The applicant shall file the stamped copy of the form with the Port when formal entry of the article is made. If entry has already occurred